

DEC 17 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAMES NALDER, Guardian Ad Litem on  
behalf of Cheyanne Nalder and GARY  
LEWIS, individually,

Plaintiffs - Appellants,

v.

UNITED AUTOMOBILE INSURANCE  
COMPANY,

Defendant - Appellee.

No. 11-15010

D.C. No. 2:09-cv-01348-ECR-  
GWF

MEMORANDUM\*

JAMES NALDER, Guardian Ad Litem on  
behalf of Cheyanne Nalder and GARY  
LEWIS, individually,

Plaintiffs - Appellees,

v.

UNITED AUTOMOBILE INSURANCE  
COMPANY,

Defendant - Appellant.

No. 11-15462

D.C. No. 2:09-cv-01348-ECR-  
GWF

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\* This disposition is not appropriate for publication and is not precedent  
except as provided by 9th Cir. R. 36-3.

Appeal from the United States District Court  
for the District of Nevada  
Edward C. Reed, Senior District Judge, Presiding

Argued and Submitted December 7, 2012  
San Francisco, California

Before: SILVERMAN, GOULD, and CHRISTEN, Circuit Judges.

Plaintiffs James Nalder, guardian *ad litem* of his daughter Cheyanne Nalder, and Gary Lewis appeal from the district court's grant of Defendant United Automobile Insurance Company's motion for summary judgment on all of Plaintiffs' claims. United Automobile Insurance Company cross-appeals from the district court's denial of United Automobile Insurance Company's motion for attorney's fees. We have jurisdiction under 28 U.S.C. § 1291, and we reverse in part and affirm in part.

We reverse the district court's grant of United Automobile Insurance Company's motion for summary judgment with respect to whether there was coverage by virtue of the way the renewal statement was worded. Plaintiffs came forward with facts supporting their tenable legal position that a reasonable person could have interpreted the renewal statement to mean that Lewis's premium was *due* by June 30, 2007, but that the policy would not *lapse* if his premium were "received prior to expiration of [his] policy," with the "expiration date" specifically

stated to be July 31, 2007. We remand to the district court for trial or other proceedings consistent with this memorandum. The portion of the order granting summary judgment with respect to the statutory arguments is affirmed.

United Automobile Insurance Company's cross-appeal regarding attorney's fees is moot in light of our disposition. We therefore affirm the district court's denial of attorney's fees. *Electro Source, LLC v. Brandess-Kalt-Aetna Grp., Inc.*, 458 F.3d 931, 941 (9th Cir. 2006).

Each party shall bear its own costs.

**REVERSED AND REMANDED IN PART, AFFIRMED IN PART.**